

FEDERAL COMMUNICATIONS COMMISSION  
ENFORCEMENT BUREAU  
MARKET DISPUTES RESOLUTION DIVISION  
45 L STREET, NE  
WASHINGTON, D.C. 20554

May 9, 2022

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Counsel for Peerless Network, Inc., et al.

Counsel for CenturyLink Communications, LLC

Re: *CenturyLink Communications, LLC, et al. v. Peerless Network, Inc., et al.*  
Bureau ID No. EB-22-MD-002, Proceeding No. 22-172

Counsel:

On May 6, 2022, CenturyLink Communications, LLC, et al. and Peerless Network, Inc., et al. requested that the Commission enter their proposed Protective Order in the above-referenced proceeding.<sup>1</sup> The proposed Protective Order, a copy of which is attached, establishes procedures "to facilitate and expedite the production and review of documents arising out of the above-referenced dispute containing 'Confidential Information,' and 'Highly Confidential Information.'"<sup>2</sup>

Having reviewed the proposed Protective Order, we note that it is based largely upon the Model Protective Order approved by the Commission in *Examination of Current Policy Concerning the Treatment of Confidential Information Submitted to the Commission*, Report and Order, 13 FCC Rcd 24816, Appendix C (1998). We are satisfied that granting the parties' request will serve the public interest. Specifically, the Protective Order will ensure that, in addition to Commission staff, only the parties' counsel and authorized individuals will have access to privileged or confidential information.

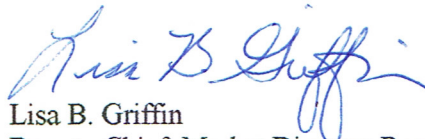
<sup>1</sup> E-mail from Douglas N. Marsh, Counsel to CenturyLink, to Anthony J. DeLaurentis, Special Counsel, Market Disputes Resolution Division, FCC Enforcement Bureau (May 6, 2022, 2:31 PM EDT).

<sup>2</sup> See Protective Order at 2.

Accordingly, we hereby grant the parties request and enter the proposed Protective Order into the above-referenced proceeding.

This letter ruling is issued pursuant to Sections 4(i), 4(j), and 208 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 208, sections 0.457, 0.459 and 1.720-1.740 of the Commission's rules, 47 CFR §§ 0.457, 0.459, 1.720-1.740, and the authority delegated by sections 0.111 and 0.311 of the Commission's rules, 47 CFR §§ 0.111, 0.311.

FEDERAL COMMUNICATIONS COMMISSION



Lisa B. Griffin  
Deputy Chief, Market Disputes Resolution Division  
Enforcement Bureau  
Federal Communications Commission

**Before the  
Federal Communications Commission  
Washington, DC 20554**

In the Matter of

CenturyLink Communications, LLC, as the successor to  
Qwest Communications Corporation, Level 3  
Communications, LLC, WilTel Communications, LLC,  
and Global Crossing Telecommunications, Inc.,

Complainants,

v.

Peerless Network, Inc., Peerless Network of Arizona,  
LLC, Peerless Network of California, LLC, Peerless  
Network of Colorado, LLC, Peerless Network of  
Connecticut, LLC, Peerless Network of Delaware, LLC,  
Peerless Network of Florida, LLC, Peerless Network of  
Georgia, LLC, Peerless Network of Illinois, LLC,  
Peerless Network of Indiana, LLC, Peerless Network of  
Kansas, LLC, Peerless Network of Kentucky, LLC,  
Peerless Network of Maryland, LLC, Peerless Network  
of Massachusetts, LLC, Peerless Network of Michigan,  
LLC, Peerless Network of Minnesota, LLC, Peerless  
Network of Missouri, LLC, Peerless Network of  
Nevada, LLC, Peerless Network of New Jersey, LLC,  
PEERLESS Network of New Mexico, LLC, Peerless  
Network of New York, LLC, Peerless Network of North  
Carolina, LLC, Peerless Network of North Dakota,  
LLC, Peerless Network of Ohio, LLC, Peerless Network  
of Oklahoma, LLC, Peerless Network of Oregon, LLC,  
Peerless Network of Pennsylvania, LLC, Peerless  
Network of Rhode Island, LLC, Peerless Network of  
South Carolina, LLC, Peerless Network of Tennessee,  
Llc, Peerless Network of Texas, LLC, Peerless Network  
of the District of Columbia, LLC, Peerless Network of  
Utah, LLC, Peerless Network of Virginia, LLC, Peerless  
Network of Washington, LLC, and Peerless Network of  
Wisconsin, LLC,

Defendants.

**Bureau ID No. EB-22-MD-002  
Proceeding No. 22-172**

**PROTECTIVE ORDER**

This Protective Order is intended to facilitate and expedite the production and review of documents arising out of the above-referenced dispute containing “Confidential Information,” and “Highly Confidential Information” as those terms are defined herein. The Protective Order establishes the manner in which such “Confidential Information” and “Highly Confidential” is to be treated. The Protective Order is not intended to constitute a resolution of the merits concerning whether any Confidential Information or Highly Confidential Information would be released publicly by the Commission upon a proper request under the Freedom of Information Act or other applicable law or regulation, including 47 CFR § 0.442.

1. Definitions.

- a. Authorized Representative. “Authorized Representative” shall have the meaning set forth in Paragraph seven.
- b. Commission. “Commission” means the Federal Communications Commission or any arm of the Commission acting pursuant to delegated authority.
- c. Confidential Information. “Confidential Information” means (i) information submitted to the Commission or another party in this proceeding by the Submitting Party that has been so designated by the Submitting Party and which the Submitting Party has determined in good faith constitutes trade secrets or commercial or financial information which is privileged or confidential within the meaning of Exemption 4 of the Freedom of Information Act, 5 U.S.C. § 552(b)(4); (ii) information submitted to the Commission by the Submitting Party that has been so designated by the Submitting Party and which the Submitting Party has determined in good faith falls within the terms of Commission rules and orders regarding the treatment of Confidential Information; ); (iii) information that has been designated by the parties as Confidential Information pursuant to the terms of the Agreed Confidentiality Order in the matter of *CenturyLink Communications, LLC, et al. v. Peerless Network, Inc., et al.*, No. 18-cv-03114 (N.D. Ill. October 1, 2018), ECF No. 27; and (iii) information that the Commission has allowed to be examined off-site and that otherwise complies with the requirements of this paragraph. Confidential Information includes additional copies of and information derived from Confidential Information.
- d. Highly Confidential Information. “Highly Confidential Information” means (i) information that satisfies the requisites of Paragraph 1(c) above and which the Submitting Party believes in good faith would materially impair or have a substantial likelihood of creating a material risk to its business if disclosed to personnel employed by the Reviewing Party; (ii) information that has been designated by the parties as Highly Confidential Information pursuant to the terms of the Agreed Confidentiality Order in the matter of *CenturyLink Communications, LLC, et al. v. Peerless Network, Inc., et al.*, No. 18-cv-03114 (N.D. Ill. October 1, 2018), ECF No. 27. Highly Confidential Information includes additional copies of and information derived from Highly Confidential Information.
- e. Declaration. “Declaration” means Attachment A to this Protective Order.

- f. Reviewing Party. “Reviewing Party” means a person or entity participating in this proceeding or considering in good faith filing a document in this proceeding. The definition of Reviewing Party does not include the Commission or Commission staff.
  - g. Submitting Party. “Submitting Party” means a person or entity that seeks confidential treatment of Confidential Information or Highly Confidential Information pursuant to this Protective Order.
- 2. Claim of Confidentiality. The Submitting Party may designate information as “Confidential Information” or “Highly Confidential Information” consistent with the definition of those terms in Paragraph 1 of this Protective Order. The Commission may, *sua sponte* or upon petition, pursuant to 47 CFR §§ 0.457, 0.459 & 0.461, determine that all or part of the information claimed as “Confidential Information” or “Highly Confidential Information” is not entitled to such treatment.
  - 3. Procedures for Claiming Information is Confidential or Highly Confidential. Confidential Information submitted to the Commission shall be filed under seal and shall bear on the front page in bold print, “CONTAINS PRIVILEGED AND CONFIDENTIAL INFORMATION—DO NOT RELEASE,” or such similar designation as appropriate under Paragraph 12. Confidential Information and Highly Confidential Information shall be segregated by the Submitting Party from all non-confidential information submitted to the Commission. To the extent a document contains both Confidential Information or Highly Confidential Information and non-confidential information, the Submitting Party shall designate the specific portions of the document claimed to contain Confidential Information and Highly Confidential Information and shall, where feasible, also submit a redacted version not containing Confidential Information or Highly Confidential Information.
  - 4. Storage of Confidential Information and Highly Confidential Information at the Commission. The Secretary of the Commission or other Commission staff to whom Confidential Information and Highly Confidential Information is submitted shall place such information in a non-public file. Such information shall be segregated in the files of the Commission, and shall be withheld from inspection by any person not bound by the terms of this Protective Order, unless such information is released from the restrictions of this Protective Order either through agreement of the parties, or pursuant to the order of the Commission or a court having jurisdiction.
  - 5. Access to Confidential Information and Highly Confidential Information. Confidential Information and Highly Confidential Information shall be made available only to Commission staff, Commission consultants, and to counsel to the Reviewing Parties, or if a Reviewing Party has no counsel, to a person designated by the Reviewing Party. Before counsel to a Reviewing Party or such other designated person designated by the Reviewing Party may obtain access to Confidential Information or Highly Confidential Information, counsel or such other designated person must execute the attached Declaration. Consultants under contract to the Commission may obtain access to Confidential Information and

Highly Confidential Information only if they have signed, as part of their employment contract, a non-disclosure agreement or if they execute the attached Declaration.

6. Counsel to a Reviewing Party or such other person designated pursuant to Paragraph 5 may disclose Confidential Information to other Authorized Representatives to whom disclosure is permitted under the terms of paragraph 7 of this Protective Order only after advising such Authorized Representatives of the terms and obligations of the Protective Order. In addition, before Authorized Representatives may obtain access to Confidential Information, each Authorized Representative must execute the attached Declaration.
7. Authorized Representatives shall be limited to:
  - a. Counsel for the Reviewing Parties to this proceeding, including in-house counsel actively engaged in the conduct of this proceeding, and their associated attorneys, paralegals, clerical staff, and other employees, to the extent reasonably necessary to render professional services in this proceeding;
  - b. Specified persons, including employees of the Reviewing Parties, requested by counsel to furnish technical or other expert advice or service, or otherwise engaged to prepare material for the express purpose of formulating filings in this proceeding; or
  - c. Any person designated by the Commission in the public interest, upon such terms as the Commission may deem proper. The term Authorized Representative shall not include the Commission or Commission staff.
8. *Access to Highly Confidential Information.* Unless otherwise agreed by the Submitting Party in writing, Highly Confidential Information shall be made available only to Commission staff, Commission consultants, outside Counsel to the Reviewing Party, and Outside Consultants for the Reviewing Party who have executed the Declaration attached hereto as Attachment A. In addition, Highly Confidential Information may be made available to the following employees of Peerless: John Barnicle, Rick Knight, Lisa Neimark, Anthony Hiller, Steven Samuels, James Brewer, Robert Sherman, and Keith Campbell; and CenturyLink's In-House Counsel and the following employees/consultants of CenturyLink/Level 3: Tiffany Brown, Ken Shomaker, Julie Ward, and Sarah Poindexter. The parties may agree to allow additional employees to access Highly Confidential Information at a later date if it is reasonably necessary to the conduct of this litigation.
9. Copies of Confidential Information and Highly Confidential Information. The Submitting Party shall provide a copy of the Confidential Material and Highly Confidential Information to Authorized Representatives upon request. Authorized Representatives may make additional copies of such information but only to the extent required and solely for the preparation and use in this proceeding, Authorized Representatives must maintain a written record of any additional copies made and provide this record to the Submitting Party upon reasonable request. The original copy and all other copies of the Confidential Information shall remain in the care and control of Authorized Representatives at all times.

Authorized Representatives having custody of any Confidential Information shall keep the documents properly secured at all times.

10. Filing of Declaration. Counsel for Reviewing Parties shall provide to the Submitting Party and the Commission a copy of the attached Declaration for each Authorized Representative within five (5) business days after the attached Declaration is executed, or by any other deadline that may be prescribed by the Commission.
11. Use of Confidential Information and Highly Confidential Information. Confidential Information and Highly Confidential Information shall not be used by any person granted access under this Protective Order for any purpose other than for use in this proceeding (including any subsequent administrative or judicial review) unless otherwise ordered by the Commission or a court of competent jurisdiction, shall not be used for competitive business purposes, and shall not be used or disclosed except in accordance with this Protective Order. This shall not preclude the use of any material or information that is in the public domain or has been developed independently by any other person who has not had access to the Confidential Information or Highly Confidential Information nor otherwise learned of its contents.
12. Pleadings Using Confidential Information or Highly Confidential Information. Submitting Parties and Reviewing Parties may, in any pleadings that they file in this proceeding, reference the Confidential Information, but only if they comply with the following procedures:
  - a. Any portions of the pleadings that contain or disclose Confidential Information or Highly Confidential Information must be physically segregated from the remainder of the pleadings and filed under seal;
  - b. The portions containing or disclosing Confidential Information or Highly Confidential Information must be covered by a separate letter referencing this Protective Order;
  - c. Each page of any Party's filing that contains or discloses Confidential Information or Highly Confidential Information subject to this Protective Order must be clearly marked: "Confidential Information included pursuant to Protective Order, [cite proceeding]" or "Highly Confidential Information included pursuant to Protective Order, [cite proceeding]"; and
  - d. The confidential portion(s) of the pleading, to the extent they are required to be served, shall be served upon the Secretary of the Commission, the Submitting Party, and those Reviewing Parties that have signed the attached Declaration. Such confidential portions shall be served under seal. They shall not be placed in the Commission's Public File unless the Commission directs otherwise (with notice to the Submitting Party and an opportunity to comment on such proposed disclosure). A Submitting Party or a Reviewing Party filing a pleading containing Confidential Information or Highly Confidential Information shall also file a redacted copy of the pleading containing no such information, which copy shall be placed in the

Commission's public files. A Submitting Party or a Reviewing Party may provide courtesy copies of pleadings containing Confidential Information or Highly Confidential Information to Commission staff so long as the notation required by subsection c. of this paragraph is not removed.

- e. The redacted version of a pleading shall bear on the front page the legend "PUBLIC VERSION" and shall clearly indicate where confidential material has been redacted from an individual page. If any pages are removed in their entirety to prevent disclosure of confidential information, the Submitting Party shall insert a placeholder that (a) identifies each omitted document by its page, exhibit, or appendix number, (b) includes a descriptive title for the omitted document, and (c) contains the words "CONFIDENTIAL AND HIGHLY CONFIDENTIAL MATERIALS OMITTED" below the descriptive title. The confidential version of a pleading shall identify any Confidential Information by including the legend "BEGIN CONFIDENTIAL" and "END CONFIDENTIAL" or "BEGIN HIGHLY CONFIDENTIAL" and "END HIGHLY CONFIDENTIAL" at the beginning and end of any such information.
13. Violations of Protective Order. Should a Reviewing Party that has properly obtained access to Confidential Information under this Protective Order violate any of its terms, it shall immediately convey that fact to the Commission and to the Submitting Party. Further, should such violation consist of improper disclosure or use of Confidential Information or Highly Confidential Information, the violating party shall take all necessary steps to remedy the improper disclosure or use. The Violating Party shall also immediately notify the Commission and the Submitting Party, in writing, of the identity of each party known or reasonably suspected to have obtained the Confidential Information or Highly Confidential Information through any such disclosure. The Commission retains its full authority to fashion appropriate sanctions for violations of this Protective Order, including but not limited to suspension or disbarment of attorneys from practice before the Commission, forfeitures, cease and desist orders, and denial of further access to Confidential Information in this or any other Commission proceeding. Nothing in this Protective Order shall limit any other rights and remedies available to the Submitting Party at law or equity against any party using Confidential Information or Highly Confidential Information in a manner not authorized by this Protective Order.
14. Termination of Proceeding. Unless otherwise ordered by the Commission or a court of competent jurisdiction, within two weeks after final resolution of this proceeding (which includes any administrative or judicial appeals), Authorized Representatives of Reviewing Parties shall destroy or return to the Submitting Party all Confidential Information or Highly Confidential Information as well as all copies and derivative materials made. Authorized representatives shall certify in a writing served on the Commission and the Submitting Party that no material whatsoever derived from such Confidential Information or Highly Confidential Information has been retained by any person having access thereto, except that counsel to a Reviewing Party may retain two copies of pleadings submitted on behalf of the Reviewing Party and other attorney work product. Any confidential information contained in any copies of pleadings retained by counsel to a Reviewing Party or in materials that have been destroyed pursuant to this paragraph shall be protected from

disclosure or use indefinitely in accordance with paragraphs 9 and 11 of this Protective Order unless such information is released from the restrictions of this Protective Order either through agreement of the parties, or pursuant to the order of the Commission or a court having jurisdiction.

15. No Waiver of Confidentiality. Disclosure of Confidential Information or Highly Confidential Information as provided herein shall not be deemed a waiver by the Submitting Party of any privilege or entitlement to confidential treatment of such Confidential Information or Highly Confidential Information. Reviewing Parties, by viewing these materials: (a) agree not to assert any such waiver; (b) agree not to use information derived from any confidential materials to seek disclosure in any other proceeding; and (c) agree that accidental disclosure of Confidential Information or Highly Confidential Information shall not be deemed a waiver of any privilege.
16. Additional Rights Preserved. The entry of this Protective Order is without prejudice to the rights of the Submitting Party to apply for additional or different protection where it is deemed necessary or to the rights of Reviewing Parties to request further or renewed disclosure of Confidential Information or Highly Confidential Information.
17. Effect of Protective Order. This Protective Order constitutes an Order of the Commission and an agreement between the Reviewing Party, executing the attached Declaration, and the Submitting Party.
18. Authority. This Protective Order is issued pursuant to Sections 4(i) and 4(j) of the Communications Act as amended, 47 U.S.C. §§ 154(i), and (j) and 47 CFR § 0.457(d).

**Attachment A**

**DECLARATION**

**In the Matter of**

**CenturyLink Communications, LLC, Level 3 Communications, LLC, WilTel  
Communications, LLC, and Global Crossing Telecommunications, Inc.**

**v.**

**Peerless Network, Inc., et al.**

I, \_\_\_\_\_, hereby declare under penalty of perjury that I have read the Protective Order in this proceeding, and that I agree to be bound by its terms pertaining to the treatment of Confidential Information and Highly Confidential Information submitted by parties to this proceeding. I understand that the Confidential Information and Highly Confidential Information shall not be disclosed to anyone except in accordance with the terms of the Protective Order and shall be used only for purposes of the proceedings in this matter. I acknowledge that a violation of the Protective Order is a violation of an order of the Federal Communications Commission. I acknowledge that this Protective Order is also a binding agreement with the Submitting Party.

(signed) \_\_\_\_\_

(printed name) \_\_\_\_\_

(representing) \_\_\_\_\_

(title) \_\_\_\_\_

(employer) \_\_\_\_\_

(address) \_\_\_\_\_

(phone) \_\_\_\_\_

(date) \_\_\_\_\_